

REMARKS

Claims 3, 6, 34 and 41 have been canceled; claims 10-29 are withdrawn; claims 1, 30 and 37 have been amended; claims 1-2, 4-5, 7-9, 30-33, 35-40 and 43 are pending.

Turning to the rejections based upon the prior art, claims 1, 4-9 and 37-43 stand rejected under 35 U.S.C. § 103 as being unpatentable over Japanese Patent Application No. 2000-300071 ("Kono") in view of U.S. Patent No. 4,197,684 ("Johnson"). In response, claims 1 and 37 have been amended to traverse this rejection. Specifically, claims 1 and 37 recite a plurality of hollow plastic blocks connected together by a plastic living hinge with no reinforcing wire material. Each of the recited hollow blocks is free of passages or openings except for pressure equalization hole. Further, each of the recited blocks has a front face comprising a rough, three-dimensional simulated rock texture. Applicants respectfully submit that in view of these amendments, independent claims 1 and 37 and therefore dependent claims 4-5, 7-9, 38-40 and 42-43 are allowable over any hypothetical combination of Kono and Johnson.

Under MPEP §§ 2142 and 2143,

[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

Citing, In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *see also* MPEP § 2143-§ 2143.03 for decisions pertinent to each of these criteria.

Kono, the base reference, is not directed toward a plurality of hollow blocks connected together. Instead, Kono, in paragraph 0007 of page 8/25 clearly teaches that each part of the boundary material 1 is extrusion molded, thereby clearly indicating that the boundary material 1 shown in Figs. 1-3 is of a solid structure. There are no sectional views indicating that any of the blocks of Kono are hollow, are vacuum molded or include a pressure equalization hole, which would be necessary for a hollow plastic structure. Further,

paragraphs 0008 and 0009 of Kono clearly make it clear that the hinges 4 include wire reinforcing material. Hence, independent claims 1 and 37 have been amended to make it clear that the plastic living hinges are free of wire reinforcing material thereby further distinguishing Kono. Still further, Kono fails to teach or suggest a rough, three-dimensional simulated rock texture as recited in independent claims 1 and 37.

In an attempt to supplement these deficiencies, the Patent Office relies upon Johnson. While Johnson is directed toward simulated rocks 12, 13 and 14, the simulated rocks 12-14 are clearly smooth in texture as shown in Figs. 3-5 and include no three-dimensional simulated rock texture as recited in independent claims 1 and 37. Johnson is directed toward a smooth stone look. Johnson also does not teach or suggest any living hinges connecting the adjacent rocks but, instead, teaches wire connectors 16, 17.

Further, Johnson does not teach or suggest a hollow structure with no through openings or passages with the exception of a pressure equalization hole as recited in independent claims 1 and 37. In contrast to amended claims 1 and 37, Johnson is directed toward a shell with an open backside as shown in Figs. 6-8 of Johnson.

Therefore, neither Kono nor Johnson teach or suggest a rough, three-dimensional simulated rock texture as recited in independent claims 1 and 37. Neither Kono nor Johnson teach or suggest plastic living hinges without wire reinforcing material as recited in independent claims 1 and 37. Neither Kono nor Johnson teach or suggest hollow block structures with no openings or passages except for a single pressure equalization hole as recited in independent claims 1 and 37.

Therefore, no *prima facie* case of obviousness has been established as no hypothetical combination of Kono and Johnson teaches or suggests all of the limitations of independent claims 1 and 37. Further, because neither of these references are directed toward a vacuum molded structure with no wire reinforcing connecting elements, there is no suggestion or motivation in either Kono or Johnson as to how the numerous modifications that would need to be made in order to arrive at the structures recited in independent claims 1 and 37.

Clearly, neither Kono nor Johnson are directed toward vacuum forming processes. Kono is directed toward an extrusion process and, while not specific, Johnson is also directed toward the same process as Johnson is merely directed toward plastic shells 12-14 as shown in the figures. The Patent Office takes the position that the openings 28-30 of Figs. 2 and 6-7 qualify as pressure equalization holes. This is clearly not the case. Those openings are for receiving the wire connectors 16, 17 and are not through openings in an otherwise enclosed hollow object for purposes of releasing pressure. Those openings clearly cannot qualify as pressure equalization holes as recited in independent claims 1 and 37.

Accordingly, applicant respectfully submits that the obviousness rejection of claims 1-2, 4-5, 7-9, 37-40 and 42-43 is improper and should be withdrawn.

Next, the office action rejects claims 2 and 30-36 under 35 U.S.C. § 103 as being unpatentable over Kono, Johnson and U.S. Patent No. 5,956,892 ("Kownacki").

The deficiencies of Johnson and Kono are described above. The amendments made to claims 1 and 37 have also been made to independent claim 30. Kownacki is merely cited for the proposition that it teaches specific structural features. However, Kownacki is not directed toward a hollow block structure with simulated, rough, three-dimensional rock texture. Kownacki does not teach or suggest a plastic living hinge as recited in independent claim 30 or the hollow block structures that are vacuumed form without any thru passages or openings other than pressure equalization holes.


Therefore, no hypothetical combination of Kono, Johnson and Kownacki teaches or suggests all of the limitations of independent claim 30 and therefore claims 30-33 and 35-36 are clearly allowable over any hypothetical combination of these three references. Because claim 1 is clearly allowable over these three references, dependent claim 2 is allowable as well. Accordingly, applicant respectfully submits that the rejection of claims 2 and 30-36 as being obvious in view of Kono, Johnson and Kownacki is improper and should be withdrawn.

An early action indicating the allowability of claims 1-2, 4-5, 7-9, 30-33, 35-40 and 42-43 is earnestly solicited.

The Commissioner is authorized to charge any fee deficiency required by this paper, or credit any overpayment, to Deposit Account No. 13-2855.

Dated: January 21, 2005

Respectfully submitted,

By 
Michael R. Hull, Reg. No, 35, 902
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago, Illinois 60606-6357
(312) 474-6300
Attorney for Applicant